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MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS AND DIGNITY OF ALL MIGRANT WORKERS

Written statement submitted by Human Rights Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[9 March 1998]

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1. Migrant workers worldwide are particularly vulnerable to human rights abuse. That vulnerability is even greater when, as in many countries of the Arabian Peninsula, domestic law in the receiving country is not only seriously deficient in worker protections, but also fails to meet international fair trial standards. The migrant labour policies of Saudi Arabia, as the Peninsula's pre-eminent political power, and a major importer of labour from Egypt, India, Indonesia, Pakistan, the Philippines, Somalia, Sri Lanka and Yemen, have impact far beyond its borders, influencing labour policies in neighbouring States and silencing sending countries' complaints with the implicit threat of mass expulsions of their nationals. Although Saudi Arabia took steps in 1997 to lessen the incentives for Saudi nationals to resell work visas or hire illegal workers, the new decrees also significantly increased fines and prison sentences for visa overstayers and other illegal migrants. More importantly, the broader flaws in the labour and legal systems remain unchanged, and efforts to address these shortcomings through the United Nations confidential "1503 procedure" have not produced any significant human rights improvements. One indicator of the severity of the problem is that of the more than 630 individuals known to have been executed in Saudi Arabia since 1990, more than half have been foreign workers.

2. Saudi Arabian law gives employers tremendous power over their foreign workers, placing significant restrictions on workers' freedom of movement, while offering almost no avenues of redress for abuses. Foreign workers must be sponsored by a Saudi national and, once in Saudi Arabia, the worker must have written authorization from the sponsor to leave the country, travel outside the city of his or her employment, change jobs, or rent an apartment. In many cases employers confiscate workers' passports, leaving them subject to possible arrest and deportation as undocumented aliens. These restrictions on movement sometimes give rise to conditions of forced labour, especially when workers live and work in rural areas, private compounds or private homes. Women employed as domestic helpers are particularly vulnerable to forced labour, as well as physical and sexual abuse, and all women are subject to additional restrictions forbidding driving, access to certain public places, and "immoral behaviour", including walking alone, not wearing a head scarf, or being in the company of a man who is not a relative. Punishments for the latter include imprisonment and flogging.

3. These restrictions foster other abuses, because they give employers leverage to force foreign workers to accept wages and working conditions other than those specified in their contracts. Workers regularly report that their employers failed to honour contracts signed in their home countries, including failing to pay wages for months at a time, placing them in lower paid and lower skilled jobs, requiring them to work longer hours than specified, and reneging on promised housing, repatriation, vacation leave and other benefits. Even contracts that are honoured typically contain provisions that can be easily abused, including requirements that workers pay their own travel costs if they are dismissed for incompetence, accept any other work assigned by the employer, refrain from engaging in any outside work, be available to work any additional hours required by the employer, and not be or become pregnant.

4. Although in theory Saudi Arabia's Labour Commission provides foreign and local workers with a neutral agency to adjudicate and arbitrate labour disputes, rulings often unfairly favour employers, and the Commission's

jurisdiction excludes large segments of the working population such as domestic helpers and illegal workers. Commission offices can be difficult to reach, especially for women, and pursuing a complaint may require several visits, a costly and dangerous proposition for workers not in possession of a passport or written authorization to travel to another city. Workers who do bring a case before the Commission may be stranded indefinitely if their employer refuses to allow them to work for someone else or leave the country. In August 1997 the Asia-Pacific Mission for Migrant Filipinos (APMMF) reported that over 500 Filipino workers were stranded in Riyadh because their employers refused to sign exit visas. According to APMMF, "most of them have grievances lodged at the Saudi Court against their employers or sponsors for contract violations such as non-payment of wages, long hours of work, poor working and living conditions, sexual and physical abuses".

5. Foreign workers accused of crimes must go before Saudi Arabia's regular court system, where convictions may include imprisonment, flogging, amputation of a hand or a hand and a foot or beheading. Saudi law favours Muslims over non-Muslims and men over women in many kinds of legal disputes, and in practice judges often rule in favour of Saudi nationals when adjudicating disputes involving foreigners. Hearings are held behind closed doors, and defendants have no legal right to legal counsel, interpreters, or access to consular officials during interrogation or trial, nor do they have the right to call or cross-examine witnesses. Convictions can be based solely on confessions obtained during interrogation, a practice that encourages the use of lengthy incommunicado detention and physical and psychological pressure to obtain a confession. International human rights organizations have also documented numerous incidents in which non-Arabic speakers have signed confessions believing they were release forms. Under Saudi law allegations of sexual assault and rape are especially difficult to prove, and victims reporting assaults may be subject to other criminal charges. These multiple shortcomings in the Saudi legal system encourage unscrupulous employers to resort to the threat of arrest on false charges like blasphemy or slander in order to pressure workers to renounce their legal claims to severance pay and other benefits. An employer may also choose to be rid of a worker altogether by testifying against him or her in a case in which conviction would result in deportation or worse; once convicted, the worker also loses any claim to unpaid wages or benefits.

6. Although sentences are subject to appeal and review by a higher court, convicted persons do not normally participate in the appeal process, and in many death penalty cases they and their families may not even learn that they have been sentenced until the day of their execution. In the case of 'Abd al-Karim al-Naqshabandi, a 40-year-old Syrian national who was arrested on 13 February 1994 and executed on 13 December 1996, family members who visited him in prison on 9 and 10 December 1996 say that he was never informed of his sentence and that they learned of his execution from a newspaper article. While officially charged with "the practice of works of magic and spells and possession of a collection of polytheistic and superstitious books", documents submitted by al-Naqshabandi to the trial judge detail a series of labour disputes with al-Naqshabandi's employer, Saudi Prince Salman bin Sa'ud bin 'Abd al-'Aziz, including more than 224,870 riyals (US$ 59,816) in back pay, severance pay and other monies owed to him, which the prince allegedly forced him to renounce in front of witnesses just prior to his arrest. Neither the

money nor the body has been returned to the family, and attempts by other family members working in Saudi Arabia to obtain redress resulted in one brother being arrested and eventually deported to the Syrian Arab Republic after several months of house arrest.

7. When facing deportation, migrants often find themselves in deportation centres where conditions are far below international standards, whose crowded holding areas lack proper ventilation or sanitary facilities. The situation worsens during Saudi Arabia's periodic crackdowns on visa overstayers and other illegal migrants, when the numbers arrested often exceed deportation centres' capacities and the overflow is held at even more crowded police stations until space is found. Deportees who lack money to pay for their repatriation may be held for months or years before returning home, and those who lack passports are dependent on their embassies to provide them with new travel documentation, a process that can also take months.

Recommendations

8. Human Rights Watch calls on the United Nations Commission on Human Rights to:

(a) Request the special rapporteurs on racism and on violence against women to undertake a joint study of Saudi Arabian laws and practices which may result in discriminatory practices against women and migrant workers;

(b) Urge the Governments of Saudi Arabia and of countries with migrant workers in Saudi Arabia to:

(i) Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;

(ii) Ensure that workers protection under domestic labour law applies to all categories of employment in which migrant workers are found, including domestic service;

(iii) Ensure that foreign consular officials are fully knowledgeable about the rights and difficulties of migrant workers and have procedures in place to help their own nationals, legal or illegal, in need; and

(iv) Adopt a policy to protect all workers, including illegal workers, who wish to bring criminal charges against abusive employers.